



RE CD

A 2024 case in the Supreme Court of Victoria has made it simpler for some trans and gender diverse young people to access gender affirming care.

The case, *Re: CD*, clarifies that an individual parent can provide valid consent to stage 1 gender affirming treatment for their child, independently of an absent parent, and the consent of both parents is not required.

The Supreme Court of Victoria emphasised that stage 1 treatment of gender dysphoria does not require court approval unless there is a dispute.

FACTUAL BACKGROUND

CD is a 12-year-old girl who was assigned male at birth. She began attending the Royal Children's Hospital Gender Service in 2020, at age eight, and was diagnosed with gender dysphoria by a multidisciplinary team of doctors. CD is in the beginning stages of puberty which has caused her high levels of distress. Her doctors have strongly recommended that she begin puberty blockers (referred to as 'stage 1' treatment) to temporarily halt the physical changes that come with puberty.

CD does not have capacity to consent to her own medical treatment (known as *Gillick*² competence), so her mother has consented on her behalf. Both CD and her mother wish to commence the treatment as soon as possible, as advised by CD's doctors.

Due to uncertainty in the law, the Hospital was not sure if the consent of CD's mother was sufficient where CD's father was not available to give consent. CD's father has not been involved in her life since she was a baby. CD's mother has exercised sole parental responsibility for most

of CD's life but she has not obtained a parenting order to formalise this arrangement.

The Hospital applied to the Supreme Court of Victoria to clarify the law and allow the provision of stage 1 treatment to CD.

WHY DID THE COURT NEED TO CLARIFY THE LAW?

Prior to *Re: CD*, the legal authorisation requirements for the treatment of gender dysphoria were unclear. In *Re: Imogen*,³ the Family Court (now part of the Federal Circuit and Family Court of Australia) suggested that medical practitioners may not be able to commence this treatment without court approval where they only have the consent of one parent, even if the other parent cannot be located or is abusive.⁴ This approach has been followed by the Federal Court of Western Australia and the Federal Circuit and Family Court of Australia.⁵

The requirement for affirmative consent from an absent parent for the treatment of gender dysphoria is at odds with prior Family Court rulings on gender-affirmative care and the standard approach to parental consent for other medical treatment.

This inconsistency meant that the Hospital was concerned that the consent of CD's mother alone might not be valid and therefore expose CD's doctors to the risk of professional misconduct charges.

WHAT DID THE COURT SAY ABOUT CONSENT TO GENDER AFFIRMING TREATMENT?

The Court confirmed that, ordinarily, each person with parental responsibility can independently consent to medical treatment for their child.⁶ This default position can be

¹ [Re: CD \[2024\] VSC 456](#).

² [Gillick v West Norfolk and Wisbech Area Health Authority & Anor \[1985\] UKHL 7; \(1986\) AC 112](#).

³ [Re: Imogen \(No 6\) \[2020\] FamCA 761](#).

⁴ [Re: Imogen \(No 6\)](#), [35(d)], [63].

⁵ [Re G4 \[2021\] FCWA 102](#); [Re Kelly \[2022\] FedCFamC1F 380](#); [Re G9 \[2022\] FCWA 65](#).

⁶ [Re: CD](#), [37].



changed by a parenting order, however there was no such order in relation to CD.⁷

The Court clarified that the standard approach to consent has applied to stage 1 gender affirming care since *Re: Jamie*⁸ and found that the law is clear stage 1 treatment is not a 'special medical treatment' and does not require court approval.⁹ The Court resolved that *Re: Imogen* has not changed this, and the part of that case that has caused uncertainty is *obiter*, meaning it is not a part of the law and should not be followed by other courts.¹⁰

As a result, the Court stated that consent for stage 1 treatment is no different to 'any other medical treatment to which a parent may consent – such as childhood vaccinations, surgery to mend broken bone, or chemotherapy to treat cancer'.¹¹ This meant that the consent of CD's mother was sufficient and there was no need to contact her father.¹²

WHAT ARE THE IMPLICATIONS OF THE DECISION FOR OTHER YOUNG TRANS PEOPLE?

The Court clarified that *Re: Imogen* did not create a legal requirement that the affirmative consent of both parents is needed before medical practitioners can commence stage 1 treatment. This means a young person who has the consent of one parent to begin puberty blockers does not need to contact an absent parent or seek a court order.

Re: CD does not clarify the impact of any state or territory laws which may impose additional requirements when providing medical treatment to a child.¹³

If you wish to stay in contact about developments in this area, please email our Legal Director, [Emily Gray](#).

⁷ *Re: CD*, [35], [37].

⁸ *Re: Jamie* [2015] FamCA 455; *Re: CD*, [16].

⁹ *Re: CD*, [38].

¹⁰ *Re: CD*, [39].

¹¹ *Re: CD*, [38].

¹² *Re: CD*, [42]-[44].

¹³ For example, [section 175](#) of the *Children and Young Persons (Care and Protection) Act 1998* (NSW), which regulates certain special medical treatments for children under 16 years.